IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 231

WABANINGO BOY SCOUT CAMP,
A Michigan Nonprofit Corporation,

Appellant,

vs.

MICHIGAN STATE TAX COMMISSION,

Appellee.

No. 232

EVANSTON Y.M.C.A. CAMP,
A Michigan Nonprofit Corporation,

Appellant,

vs.

MICHIGAN STATE TAX COMMISSION,

Appellee.

Appeals from the Supreme Court of Michigan

APPELLANTS' BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM

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QUESTION PRESENTED

Although appellee asserts a contrary conclusion, appellee's admissions reveal that appellants have presented a substantial Federal question.

Appellee asserts (p. 4) that "appellants' jurisdictional statement does not properly state any federal question." But soon thereafter appellee's own admissions (pp. 4, 6) reveal that this conclusion is erroneous. For appellee states (p. 4):

> "We believe the only possible federal question to be:
>
> > "Can the State of Michigan distinguish, for ad valorem property tax exemption purposes, between camp facilities available to the use of its residents, as compared to camp facilities available to the use of nonresidents?"

Then appellee states (p. 6):

> "If the appellants * * * had established that their camp facilities were used by Michigan residents in substantial part (50 per cent at least), presumably they would have been granted the ad valorem property tax exemption here in question."

Thus appellee concedes that appellants are, by paragraph Fourth, as construed by the Michigan Court, denied the tax exemption granted other Boy Scout and Y.M.C.A. organizations solely because appellants' Boy Scouts and Y.M.C.A. youth are nonresidents. This is the same "question presented" set forth in our jurisdictional statement (p. 4), and it presents a question of equal protection of the laws under the authorities there cited (pp. 7-10).

STATEMENT OF THE CASE

Except by making two erroneous assertions, appellee does not attempt to contradict or question any statement in appellants' statement of the case.

Although appellee asserts (p. 5) that it "cannot accept appellants' statement of the case," appellee actually does

not attempt to contradict or question any statement therein except by the making of two erroneous assertions.

First, appellee states (p. 5): "There is not a scintilla of evidence presented to substantiate the allegation that these corporations in fact operated and conducted themselves as nonprofit corporations." Appellee's statement is not correct. In the proceedings before appellee, the Tax Commission, appellants filed sworn statements that they have always operated, and used their camp properties, within the limitations of their articles as nonstock, nonprofit, membership corporations. *(Wabaningo App. 4a, 6a, 14a, 19a; YMCA App. 4a, 6a, 12a, 15a, 18a). These sworn statements have never been denied. They are part of the record on which appellee Tax Commission acted and which was before the Supreme Court of Michigan. (Wabaningo App. 1a-2a, 27a-28a; YMCA App. 1a-2a, 33a-34a). These sworn statements are the type of evidence which is receivable before the Tax Commission in proceedings to determine whether property is exempt from taxation under the exemption statutes. *In re Dearborn Clinic and Diagnostic Hospital*, 342 Mich. 673, 71 N. W. 2d 212 (1955).

Actually, appellants made no direct "allegation" in their statement of the case that they "in fact conducted themselves as nonprofit corporations." The presumption exists until the contrary is proved that a corporation of limited powers acts within those powers and does not act *ultra vires*. *Cincinnati, N. O. & T. P. Railway Co.* v. *Rankin*, 241 U. S. 319, 327 (1916).

Appellee's only other disagreement with our statement of the case is the assertion (p. 5): "Neither is there merit

* The parenthetic references (Wabaningo App.) and (YMCA App.) refer to the printed appendices of the record certified here from the Supreme Court of Michigan.

to the statement that these corporations would have been exempted from real property taxation, if it were not for the amendment setting forth the membership requirement." That is not correct. For many years before the amendment of paragraph Fourth in 1960 appellants had been exempted by the statute from real property taxation to the same extent that all other Boy Scout and Y. M. C. A. organizations were exempted, Y. M. C. A. property being wholly exempt and Boy Scout property up to 160 acres. (Juris. St. 4a). The 1960 amendment changed that (id.), and appellee admits (p. 6), by the quotation we have set out above, that except for the amendment (or if 50 per cent of appellants' members were Michigan residents) appellants would still be enjoying such exemptions.

Appellee observes (p. 5) that the question of equal protection under the 14th Amendment was first presented in appellants' applications for leave to appeal from the decision of appellee Tax Commission to the Supreme Court of Michigan. The Court granted the application and considered and ruled on the question. (Juris. St. 10a, 12a). That adequately brings the Constitutional issue here. *Raley* v. *Ohio*, 360 U.S. 423, 436 (1959). Moreover, that issue first emerged from the Tax Commission's decision.

ARGUMENT

1.

Appellants are proper parties in interest to present the Constitutional issue.

Under its Part 1, page 8, appellee argues (pp. 8-11) that appellants lack standing to sue. Appellee's first point in support of that contention is (p. 8) that since appellants are Michigan Corporations "a question of discrimination between residents and nonresidents is not involved in this proceeding," and therefore appellants cannot invoke the Constitutional issue on their own behalf.

This point has no merit. Since appellants are denied tax exemption solely because the Boy Scouts and Y.M.C.A. youth who use their camps are nonresidents, appellants are the victims of discriminatory taxation, and they have standing to invoke on their own behalf the equal protection clause of the 14th Amendment, under the principles of the cases cited on page 9 of our Jurisdictional Statement.

Appellee then contends (p. 9) that appellants are not "in a position to espouse the cause of nonresident Boy Scouts or Y.M.C.A. youth" who use their camps. Appellants do not rest their standing on that basis. Our position is that due to our close relationship with the nonresident youth we have standing to attack paragraph Fourth on our own behalf because of the discrimination it works upon us by reason of that relationship. Our position is squarely supported by the cases cited in our Jurisdictional Statement (pp. 9-10), and it was originally set forth immediately preceding those citations (foot p. 8, top p. 9).

Appellee's three numbered points (p. 9) only emphasize the solid foundation for appellants' standing to sue. The

first two points can be considered together. They are that there is no "direct relationship" between appellants and the Illinois youth who use the camps, and that the requirement that appellants pay taxes "bears no direct or legal relationship" to such youth.

On their face these contentions lack any merit. Appellants' liability for taxes is created solely by the fact that Illinois youth attend the camps. This demonstrates that there is both a direct and a legal relationship between appellants and these youth, and between these youth and appellants' liability for taxes, that gives appellants standing to sue. See, for example, *Pierce* v. *Society of Sisters*, 268 U.S. 510, 530, 534-536 (1925), cited and briefly explained in our Jurisdictional Statement (p. 9).

Appellants, for many years exempt from taxation to the same extent as all other Boy Scout and Y. M. C. A. organizations, were denied that exemption by the 1960 amendment (Juris. St. 3) solely because their membership, as the word was construed by the Michigan Court, are nonresident Boy Scouts and Y. M. C. A. youth (Juris. St. 5-6). Thus there is a clear financial impact upon appellants solely because their members are nonresidents.

Going now to the record, it there appears that there is a direct and legal corporate relationship between appellants and their Illinois youth who use their camps. Appellants' respective articles of association show that appellants are expressly designed and authorized to provide and operate camp facilities for, and to train and discipline, the Boy Scouts and Y.M.C.A. youth who use them. Thus Wabaningo's articles, adopted and filed in 1924, provide in part (Wabaningo App. 23a) that the corporate purpose is:

> "To promote through organization, the ability of boys to do things for themselves, and others, to train them

> to scout craft, and to teach them patriotism, courage self reliance, and kindred virtues, using the strictly educational program and methods which are now in common use by Boy Scouts; * * * to provide benevolent and charitable means whereby boys may obtain physical, social, moral, and religious culture, and the development of good character and citizenship through life in the out of doors * * *."

The Y.M.C.A. Camp articles, adopted and filed in 1923, employ similar phraseology. (YMCA App. 20a).

Appellee's third point (p. 9) is that there is no showing that the youth who use the camps are adversely affected by the denial of the tax exemption. Whatever may be the materiality of this point, appellee's statement is not correct. The articles of each appellant provide:

> "A charge, based upon the actual cost of operation and maintenance, may be levied upon such persons as may attend the camp and be able to pay therefor." (Wabaningo App. 24a-25a; YMCA App. 21a.)

Any charge, such as taxes, increases the costs that must be paid by the campers. Appellants, the taxpayers, have a corporate duty and legal standing to contest the validity of these taxes. *International Harvester Co.* v. *Wisconsin Department of Taxation*, 322 U.S. 435, 440 (1944); *Travis* v. *Yale & Towne Manufacturing Co.*, 252 U.S. 60, 75 (1920), both cited in our Jurisdictional Statement (p. 9).

Appellee's footnote observation (p. 8), that "technically neither appellant is a Y.M.C.A. or Boy Scout organization," is shown to be without foundation by the undisputed facts set forth in our Jurisdictional Statement (pp. 4, 5, 10); in brief, Wabaningo Boy Scout Camp is a corporation wholly owned and controlled by Evanston Council of the Boy Scouts of America, and Evanston Y.M.C.A. Camp is a

corporation wholly owned and controlled by Evanston Y.M.C.A. Wabaningo was incorporated in 1924 and its declared purpose in its articles, brief excerpts from which are set out above, mark it as nothing else but a "Boy Scout organization." (Wabaningo App. 22a-27a). Evanston Y.M. C.A. Camp was incorporated in 1923 and its articles similarly show it to be a "Young Men's Christian Association." (YMCA App. 20a-24a).

Appellee says (p. 10) that "it is not [appellants'] members who are adversely affected by the denial of the tax exemption in question but rather the members of the Illinois Boy Scout and Y. M. C. A. organizations." The Michigan Court held that "membership" in paragraph fourth means the youth attending the camps. (Juris. St. 5-6). These youth are Boy Scouts or Y. M. C. A. youth of the Illinois organizations; the youth members of the related Michigan and Illinois organizations are identical.

Appellee states (p. 10) that appellants "are instruments of Illinois corporate entities." This is true, but appellants have a very close and active relationship with their Boy Scout and Y. M. C. A. youth members; they are live and active instruments. They furnish training, inspiration, and discipline for their members and they finance the camps by charges upon their members, as shown by the above extracts and other provisions of their articles. (Wabaningo App. 22a-27a; YMCA App. 20a-24a).

Thus it is idle for appellee to say (p. 11) in closing its argument on standing to sue, that the relationship between appellants and their members who use the camps "is too remote and too inconsequential and unsubstantial for appellants to be in a position to raise the equal protection argument here posed," when (1) in fact that relationship is very close and intimate, and (2) as a matter of law that

relationship brings into play the statutory discrimination against appellants and deprives them of the exemption.

2.

The inheritance tax cases cited by appellee (pp. 11-21) rest upon a special principle of state sovereignty not applicable here.

Appellee's argument captioned "Appellants do not present a substantial federal question" (pp. 11-21) is based upon inheritance tax cases, which are not applicable here. The principle of these cases is that since a state has the power to determine who shall take property by devise or descent, it may discriminate against nonresidents and others in respect both of the right to inherit and the level of inheritance taxes. See *Maxwell* v. *Bugbee*, 250 U.S. 525, 540-542 (1919) cited by appellee (p. 13).

The principle of the inheritance tax cases is *sui juris*. It has never been extended to any other form of taxation. No discrimination in other forms of taxation based on nonresidence has ever been sustained, so far as we can discover, and appellee cites no authority therefor.

The absolute inapplicability of the inheritance tax principle to ad valorem property taxes is demonstrated by comparing *United States* v. *Burnison*, 339 U.S. 87 (1950), with *Phillips Chemical Co.* v. *Dumas Independent School District*, 361 U.S. 376 (1960), both cited by appellee (pp. 14, 18). *Burnison* sustained a California statute which made devises to the United States invalid even though California permitted devises to the state and its subdivisions. The Court held that this discriminatory treatment was within the state's power, citing *Maxwell* v. *Bugbee*, *supra*.

But in *Phillips Chemical Co.* v. *Dumas Independent School District*, *supra*, 361 U.S. 376, the Court held invalid a Texas statute that exempted from ad valorem taxation state property leased to a private concern, while denying exemption to Federal property leased to a private concern, as an unconstitutional discrimination against the United States. Thus the Court held in effect that the inheritance tax principle did not apply to ad valorem property taxes.

The only tax cases cited by appellee rest on the inheritance tax principle. Appellee's non-tax cases deal with general principles of classification and are not relevant.

Appellee argues (p. 21) that the statute "involves no more unconstitutional classification than the requirement that a nonresident pay a higher fishing or hunting fee in the State of Michigan than does a resident." That argument has no validity in respect to operations on the scale of summer camps. In *Toomer* v. *Witsell*, 334 U.S. 385, 395-403 (1958), and *Mullaney* v. *Anderson*, 342 U.S. 415 (1952), commercial fishing licenses higher for nonresidents than for residents were held unconstitutionally discriminatory.

Following the *Toomer* decision *Edwards* v. *Leaver*, 102 F. Supp. 698 (D. C. R. I. 1952), held invalid under the equal protection clause of the 14th Amendment a Rhode Island statute because it had characteristics similar to the one here in issue. It forbade taking fish from the waters of the state by foreign corporations, and by domestic corporations 50 per cent or more of whose stock was owned by nonresidents, and it required that 51 per cent of the crew of a licensed boat must be residents of the state.

3.

The judgments of the Supreme Court of Michigan are not conclusive.

Appellee argues under its point 3 (p. 21) that "The judgments of the Supreme Court of Michigan are conclusive." Appellee says that the Michigan Court found that the purpose of the exemption was "for the health and welfare of the youth of the State" [of Michigan]. But this purpose cannot justify a discrimination against appellants solely because the youth using their camps are nonresidents. *Toomer* v. *Witsell*, *supra*, 334 U.S. 385, 397-399; *Phillips Chemical Co.* v. *Dumas Independent School District*, *supra*, 361 U.S. 376, 383-385. Appellee further says: "The Court found that the statute was not designed to discriminate against nonresident Y. M. C. A. or Boy Scout members." We submit that no such finding can be spelled out, but even if it could it would not be binding on this Court. See cases cited in our Jurisdictional Statement, page 8. These cases dispose of all of the other contentions in appellee's point 3. There is no merit in them.

CONCLUSION

It should be noted that appellee does not question our argument in our Jurisdictional Statement (pp. 11-12) that the 1961 amendment does not in any respect relieve paragraph Fourth from unconstitutionality.

We have fully dealt with the arguments that are repeated and summarized in appellee's conclusion and there is no need to repeat our arguments here.

We are constrained to suggest, however, that appellee's summary presents startling vistas. Assume a discrimina-

tory statute directed at corporations having Negro stockholders. Under appellee's theory (pp. 22-23) the corporation could not object since it is not a Negro, and the stockholders could not object since the statute discriminates only against the corporation.

The question here presented is so substantial as to require plenary consideration by the Court. Appellee's motion should be denied.

Respectfully submitted,

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